

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
FILE
OCT 13 1992

Federal Communications Commission
Office of the Secretary

In The Matter of

Amendment Of Parts 65 And 69 Of
The Commission's Rules To Reform
The Interstate Rate Of Return
Represcription And Enforcement
Processes

CC Docket No. 92-133

REPLY COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New England Telephone and Telegraph Company and New York Telephone Company (the NYNEX Telephone Companies or NTCs) submit these Reply Comments particularly to the Comments filed September 11, 1992, by the General Services Administration (GSA) in the above-captioned proceeding. This proceeding, according to the Commission's Notice Of Proposed Rulemaking And Order released July 14, 1992 (FCC 92-256), concerns "fundamental reform of [the FCC's] rate of return represcription and enforcement processes."¹

GSA asserts that the FCC should expeditiously initiate a proceeding to represcribe a rate of return to be reflected by all LECs in April 1, 1993, interstate access tariff filings.² GSA's position lacks merit and should be rejected.

1 NPRM, para. 1.

2 GSA i.

No. of Copies rec'd
List A B C D E

0+5

In the LEC Price Cap Order³ the Commission held:

"In order to provide a reasonable period in which to review the operation of the price cap plan, we anticipate continuing the earnings levels in the backstop at the levels adopted here, for at least the initial four years price cap period, absent a compelling reason to adjust them."⁴

It should be emphasized that the Commission prescribed the LEC price cap plan as an integrated package in which the backstop earnings levels are inextricably linked with the other components such as the productivity offset.⁵ For example, the Commission observed:

"Individual LECs may experience significant variations from the industry productivity norm, not because of their own foresight and efforts but as a result of regional economic booms or recessions, among other factors. These possible sources of errors in the productivity offset support the adoption of a backstop program (at least until we acquire additional experience with LEC price caps), to adjust rates in the event that such unanticipated errors in the price cap formula occur."⁶

In this light, the Commission wisely expressed a strong preference to retain the LEC price cap package intact for at least the initial four years in order to be able to effectively study the initial experience without distortions from midstream changes to particular elements of the package. To change any

³ Policy And Rules Concerning Rates For Dominant Carriers, CC Docket No. 87-313, Second Report And Order released October 4, 1990, 5 FCC Rcd 6786.

⁴ Id. at para. 129. Those backstop earnings levels (associated with a 3.3% productivity offset) entail a 10.25% lower formula adjustment mark, a no sharing zone of 11.25% - 12.25%, a 50-50 sharing zone of 12.25% - 16.25%, and 100% sharing above 16.25%. Id. at paras. 123-27.

⁵ See, e.g., id. at paras. 20, 120-121, 135.

⁶ Id. at para. 120.

elements of the price cap package, such as the backstop earnings levels, would require full notice and comment by price cap LECs and consideration of the entire package. GSA simply has provided no compelling reason to prematurely launch into such an inquiry, especially where the Commission has observed that its prescribed rate of return "is a point within a broad zone of reasonableness."⁷

Moreover, the Commission clearly indicated that the NPRM and its reform proposals apply just to rate of return LECs and not to price cap LECs.⁸ Thus, for example, the Commission stated that "any future represcription would not affect the sharing zones for price cap LECs."⁹ Accordingly, GSA's Comments are outside the scope of this proceeding and should be dismissed.

The NTCs would like to take this opportunity to support USTA's Comments in this proceeding and highlight several points. First, we commend the Commission's proposal to continue to prescribe a unitary, overall rate of return.¹⁰

Second, the FCC should not close the door in advance to the types of methodologies or data parties can submit to determine cost of equity.

⁷ E.g., NPRM at para. 97.

⁸ Id. at paras. 2, 16, 91, 95, N. 92.

⁹ Id. at N. 92.

¹⁰ Id. at para. 18.

Third, for the triggering of rate of return represcription proceedings, we support a semi-automatic, reasonable mechanism not wed to the calendar.

Fourth, notwithstanding certain Comments,¹¹ the Commission should not use Regional Holding Company (RHC) data as a surrogate to determine interstate access cost of capital. Given RHC diversification into businesses disparate from interstate access, Operating Telephone Company data offer a much better surrogate.

Fifth, the NTCs of course will continue to cooperate in furnishing data the Commission needs for its regulatory purposes. To the extent price cap LEC data may be relevant in rate of return represcriptions, it would seem efficient for the Commission to first draw upon commercially available or already-filed public data (e.g., ARMIS and Form M reports).

Finally, the NTCs oppose rate of return enforcement approaches that go beyond the Commission's Section 204¹² powers or do not provide symmetrical treatment of underearnings.

¹¹ Frederick & Warinner; Fred Williamson & Associates.

¹² Communications Act, 47 U.S.C. Section 204.

In conclusion, the Commission should reject GSA's request to institute a proceeding to reset price cap LECs' backstop earnings levels, and should adopt the positions expressed herein and by USTA.

Respectfully submitted,

New England Telephone and
Telegraph Company
and
New York Telephone Company

By:

Campbell L. Ayling

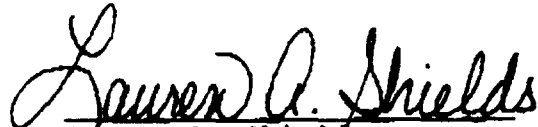
Mary McDermott
Campbell L. Ayling

120 Bloomingdale Road
White Plains, N.Y. 10605
914/644-5245

Dated: October 13, 1992

CERTIFICATE OF SERVICE

I certify that copies of the foregoing REPLY COMMENTS OF THE NYNEX TELEPHONE COMPANIES in CC Docket No. 92-133 were served on each of the persons listed on the attached Service List, this 13th day of October, 1992, by first class United States mail, postage prepaid.


Lauren A. Shields

SERVICE LIST

Dennis Mullins
Vincent L. Crivella
Michael J. Ettner
General Services Administration
18th & F Streets, N.W. Room 4002
Washington, D.C. 20405

William B. Barfield
M. Robert Sutherland
BellSouth Telecommunications, Inc.
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30367

Frank W. Krogh
Donald J. Elardo
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Michael A. Gotstein
CASCO Telephone Company
212 Church Avenue
P.O. Box 126
Casco, WI 54205-0126

Martin T. McCue
United States Telephone Association
900 19th Street, N.W. Suite 800
Washington, D.C. 20006-2105

Carol F. Sulkes
Theodore D. Frank
Vonya B. McCann
Central Telephone Company
8745 Higgins Road
Chicago, Illinois 60631

Carolyn C. Hill
ALLTEL Service Corporation
1710 Rhode Island Ave.
Suite 1000
Washington, D.C. 20036

Thomas E. Taylor
William D. Baskett III
Christopher J. Wilson
Cincinnati Bell Telephone Company
2500 Central Trust Center
201 East Fifth St.
Cincinnati, OH 45202

Leslie A. Vial
The Bell Atlantic
Telephone Companies
1710 H. Street, N.W.
Washington, D.C. 20006

Curtis W. Barker
Delhi Telephone Company
107 Main Street
P.O. Box 271
Delhi, New York 13753

B. Earl Hester, Jr.
Lexington Telephone Company
200 North State St.
P.O. Box 808
Lexington, N.C. 27293-0808

James P. Tuthill
Lucilee M. Mates
Pacific Bell
140 New Montgomery St., Rm. 1526
San Francisco, California 94105

Joanne S. Bochis
NECA
100 South Jefferson Road
Whippany, New Jersey 07981

James L. Wurtz
Nevada Bell
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

David Cosson
L. Marie Guillory
National Telephone
Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington D.C. 20037

J. Allen Layman
Roanoke and Botetourt
Telephone Company
P.O. Box 174
Daneville, VA 24083

Andrew D. Jader
Nebraska Central Telephone Company
P.O. Box 700
Gibbon, Nebraska 68840

Alan B. Terrell
Rochester Telephone Company, Inc.
P.O. Box 507
Rochester, Indiana 46975

John N. Rose
The Organization for the
Protection and Advancement
of Small Telephone Companies
2000 K Street, NW Suite 205
Washington, D.C. 20006

Josephine S. Trubek
Rochester Telephone
Corporation, Inc.
180 South Clinton Avenue
Rochester, New York 14646

Linda D. Hershman
Southern New England
Telephone Company
227 Church Street
New Haven, CT 06506

Charles D. Metcalf
UTELCO, Inc.
827 Sixteenth Avenue
P.O. Box 88
Monroe, Wisconsin 53566-0088

Durward D. Dupre
Richard C. Hartgrove
John Paul Walters, Jr.
Southwestern Bell Telephone Company
1010 Pine Street, Room 2114
St. Louis, Missouri 63101

Lawrence E. Sarjeant
Robert B. McKenna
US WEST Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Frank M. Sahlman, Sr.
Topsham Telephone Co., Inc.
Box 1075
East Corinth, VT 05040

Marc A. Stone
Fred Williamson & Associates Inc.
2921 East 91st Street, Suite 200
Tulsa, Oklahoma 74137-3300

Thomas P. Kerester
Barry Pineles
United States Small Business
Administration
409 3rd Street, S.W.
Washington, D.C. 20416

Larry E. Knegendorf
Fred W. Weier
Ray J. Riordan
Wisconsin State
Telephone Association
6602 Normandy Lane
Madison, Wisconsin 53719

Jay C. Keithley
SPRINT
1850 M. Street, N.W.
11th Floor
Washington, D.C. 20036

Mark H. Blake
Community Service Telephone Company
33 Main Street
Winthrop, ME 04364